

Senate Bill No. 522

CHAPTER 307

An act to amend Section 9357.3 of, to add Part 8 (commencing with Section 22970) to Division 5 of Title 2 of, to repeal Article 9 (commencing with Section 9380) of Chapter 3.5 of Part 1 of Division 2 of Title 2 of, and to repeal Article 3 (commencing with Section 20720) of Chapter 8 of Part 3 of Division 5 of Title 2 of, the Government Code, relating to state employee benefits, and making an appropriation therefor.

[Approved by Governor September 1, 1999. Filed
with Secretary of State September 2, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 522, C. Wright. State employee benefits.

The Legislators' Retirement Law and the Public Employees' Retirement Law authorize members to participate in supplemental contributions programs.

This bill would delete those provisions and would establish a separate supplemental contributions program for eligible employees. The bill would create the Supplemental Contributions Program Fund and would continuously appropriate all moneys in that fund to the Board of Administration of the Public Employees' Retirement System to carry out the purposes of the program.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 9357.3 of the Government Code is amended to read:

9357.3. If the membership of a member is terminated, except by death or retirement pursuant to this chapter, he or she shall be paid forthwith all of his or her accumulated contributions.

SEC. 2. Article 9 (commencing with Section 9380) of Chapter 3.5 of Part 1 of Division 2 of Title 2 of the Government Code is repealed.

SEC. 3. Article 3 (commencing with Section 20720) of Chapter 8 of Part 3 of Division 5 of Title 2 of the Government Code is repealed.

SEC. 4. Part 8 (commencing with Section 22970) is added to Division 5 of Title 2 of the Government Code, to read:

PART 8. SUPPLEMENTAL CONTRIBUTIONS PROGRAM

CHAPTER 1. GENERAL PROVISIONS

22970. (a) The Supplemental Contributions Program is hereby established to be a defined contribution plan within the meaning of subsection (i) of Section 414 of Title 26 of the United States Code. This program shall operate solely at the option of the participants and shall in no way obligate employers for lifetime annuity payments to participating employees or their beneficiaries.

(b) This part does not establish a new program, but rather recodifies, and further defines the Supplemental Contributions Program as amended by Chapter 576 of the Statutes of 1994, to ensure full compliance with the applicable provisions of Title 26 of the United States Code.

22970.1. The benefits provided under the Supplemental Contributions Program shall supplement the benefits provided under Part 3 (commencing with Section 20000) and Chapter 3.5 (commencing with Section 9350) of Part 1 of Division 2.

22970.2. (a) The Supplemental Contributions Program is a qualified profit-sharing plan under paragraph (27) of subsection (a) of Section 401 of Title 26 of the United States Code.

(b) The design and administration of the Supplemental Contributions Program shall conform with the applicable provisions of Title 26 of the United States Code and the Revenue and Taxation Code.

22970.3. If any provision of this part or application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this part that can be given effect without the invalid provision or application by a court of competent jurisdiction application, and to this end the provisions of this part are severable.

CHAPTER 2. DEFINITIONS

22970.10. “Account” means the account maintained with respect to the participant that reflects the aggregate value of the following amounts credited to the participant:

(a) Employee after-tax contributions to the plan.

(b) Net earnings of the Supplemental Contributions Program allocable to the participant.

(c) Any amount credited to the participant’s account by reason of a transfer from another plan or arrangement in accordance with applicable laws.

22970.11. “Beneficiary” means any person or persons designated by the participant pursuant to this part, or otherwise entitled by



statute, to receive distributions from the participant's account upon the death of the participant.

22970.12. "Board" means the Board of Administration of the Public Employees' Retirement System.

22970.13. "Compensation" means the total amount paid to an employee for a plan year as required to be reported on the employee's Internal Revenue Service form W-2 for income tax withholding purposes. This amount shall include employee contributions picked up by the employer under paragraph (2) of subsection (h) of Section 414 of Title 26 of the United States Code; and any amounts deducted by the employer from the participant's salary, including deductions for tax-deferred retirement plans or insurance programs; deductions for participation in a tax-sheltered annuity within the meaning of Section 403(b) of Title 26 of the United States Code; deductions for participation in an eligible deferred compensation plan within the meaning of Section 457 of Title 26 of the United States Code; and deductions for participation in a plan that meets the requirements of Section 125 or subsection (k) of Section 401 of Title 26 of the United States Code.

22970.14. "Disability" means a disability of permanent or extended and uncertain duration, as determined by the board.

22970.15. "Early retirement age" means the age at which the participant attains age 50 or qualifies for early retirement under Part 3 (commencing with Section 20000).

22970.16. (a) "Eligible employee" means:

(1) Any person employed by the state, the university, a school employer, or a contracting agency who is a member of the system as defined pursuant to the provisions of Chapter 4 (commencing with Section 20370) of Part 3.

(2) Any legislator, as defined pursuant to Section 9351.3, who is a member of the Legislators' Retirement System.

(b) The board shall determine when the members of the system who are employed by a school employer or a contracting agency shall become eligible employees.

22970.17. "Employee contribution" means the amount contributed by the participating employee to his or her account in the plan.

22970.18. "Fund" means the Supplemental Contributions Program Fund.

22970.19. "Net earnings" means the income earned, or losses incurred, on the Supplemental Contributions Program Fund, less the costs of administering the plan.

22970.20. "Participant" means an eligible employee who has contributions credited under the plan.

22970.21. "Plan" means the Supplemental Contributions Program.

22970.22. “Plan year” means the 12-month period commencing on any January 1 and ending on the following December 31.

22970.23. “Retirement” means termination of all employment for the employer and completion of all conditions precedent to receiving a distribution for retirement.

22970.24. “System” means the Public Employees’ Retirement System.

22970.25. “Termination” means termination of employment by reason of separation from all service for all employers that participate in the system.

22970.26. “Valuation date” means the date as of which the assets of the fund are valued.

CHAPTER 3. ADMINISTRATION OF THE PLAN

22970.30. (a) Except as provided in this part, the plan shall be administered by the board in conformity with its powers and duties for administration of the system as set forth in Part 3 (commencing with Section 20000). The board shall, to the extent that it determines feasible, follow the procedures set forth in Article 7 (commencing with Section 20220) of Chapter 2 of Part 3.

(b) The board may retain a third-party administrator to perform investment management, recordkeeping, customer service, or other plan administration services and the expenses associated with such retention shall be paid from the fund.

22970.31. (a) The board shall adopt a plan instrument embodying the material terms and conditions of the plan consistent with this part and the applicable provisions of Title 26 of the United States Code.

(b) The board may, as it deems necessary or appropriate, amend the plan consistent with this part and the applicable provisions of Title 26 of the United States Code.

22970.32. With regard to the plan, the board shall not engage in any transaction prohibited by subsection (b) of Section 503 of Title 26 of the United States Code.

22970.33. The board may require a third-party administrator, recordkeeper, custodian, or investment manager that is contracted with, or appointed by, the system to be subject to the duties set forth in Section 24032.

CHAPTER 4. THE FUND

22970.40. The Supplemental Contributions Program Fund is hereby established as a special trust fund in the State Treasury to accept participant contributions to the plan.

22970.41. The board shall have control of the investment of the assets of the fund.



22970.42. Notwithstanding any other provision of law, the board may retain a bank or trust company to serve as a custodian for safekeeping, recordkeeping, delivery, securities valuation, investment performance reporting, or other services in connection with investment and administration of the fund.

22970.43. Notwithstanding Section 13340, all moneys in the fund are continuously appropriated, without regard to fiscal years or plan years, to the board to carry out the purposes of this part.

22970.44. The assets of the fund shall be valued annually, and may be valued more frequently as prescribed by the board.

CHAPTER 5. ELIGIBILITY

22970.50. Any person who is an eligible employee may elect, in a manner prescribed by the board, to participate in the plan.

CHAPTER 6. CONTRIBUTIONS

22970.55. (a) Employee contributions to the plan shall be made solely at the option of the participant.

(b) Employee contributions may be made directly by the participant to the plan on a periodic basis as specified by the board, or may be withheld from the employee's compensation after taxes and submitted by the employer through payroll deduction.

(c) The board shall establish the minimum contribution amount.

22970.56. (a) Notwithstanding any other provision of law to the contrary, contributions to the plan shall be subject to the applicable limitations imposed by Section 415 of Title 26 of the United States Code, as that section may be amended from time to time and as these limits may be adjusted by the Commissioner of Internal Revenue.

(b) Notwithstanding any other provision of law or contract to the contrary, the amount of compensation that is taken into account in determining the allocations to each participant's account under the plan shall not exceed the applicable annual compensation limitations prescribed by paragraph (17) of subsection (a) of Section 401 of Title 26 of the United States Code, as that section may be amended from time to time and as that limit may be adjusted by the Commissioner of Internal Revenue.

(c) The plan shall provide for the return of excess annual additions and the gain attributable thereto in accordance with Section 415 of Title 26 of the United States Code. In the event that a participant participates in more than one plan of the employer, any annual additions shall be deemed to consist first of annual additions to this plan.

22970.57. (a) There shall be no employer contributions to the plan.

(b) There shall be no employer payment of participant contributions on behalf of a participant in accordance with paragraph (2) of subsection (h) of Section 414 of Title 26 of the United States Code.

CHAPTER 7. PARTICIPATION ACCOUNTS

22970.60. Contributions made by the participant to the plan shall be credited to the participant's account.

22970.61. In the case of a contribution that is made under a mistake of fact, nothing in this part shall prohibit the return of that contribution to the participant within one year after discovery of the mistake.

22970.62. The net earnings of the fund shall be allocated to the participant's account as of each valuation date.

22970.63. The value of each participant's account shall be determined at least once annually in a manner prescribed by the board.

22970.64. A participant shall receive a statement that displays the value, or balance, of the participant's account and summarizes any credits to the account or other transactions.

CHAPTER 8. RIGHTS TO ALLOCATIONS

22970.65. A participant has a vested right to 100 percent of the value of the participant's account. The right accrues when the person becomes a participant.

22970.66. The right of a participant to allocations to the participant's account is not subject to execution or any other process whatsoever, except to the extent permitted by Section 704.110 of the Code of Civil Procedure, and is unassignable except as specifically provided under this part.

CHAPTER 9. COMMUNITY PROPERTY

22970.70. (a) Upon the legal separation or dissolution of marriage of a participant, the court shall include in the judgment or a court order the date on which the parties separated.

(b) If the community property is divided in accordance with subdivision (a) of Section 2610 of the Family Code, the court shall order that the allocations to the participant's account during the marriage be divided into two separate and distinct accounts in the name of the participant and the nonparticipant spouse, respectively. Any contributions or earnings that are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the participant.



22970.71. For purposes of this chapter, “nonparticipant spouse” means the spouse or the former spouse of the participant, who as a result of petitioning the court for the division of community property, has been awarded a portion of the allocations to the participant’s account during the marriage to the participant.

22970.72. The nonparticipant spouse shall have the right to a lump sum distribution of the amount awarded to the nonparticipant spouse by the judgment or court order.

CHAPTER 10. BENEFICIARY

22970.75. The participant may designate any person or persons as beneficiaries to receive any amount that may be payable upon the death of the participant pursuant to the provisions of Section 22970.88. The beneficiary or beneficiaries shall be designated on a form prescribed by the board, signed by the participant, and delivered to a plan representative prior to the participant’s death.

22970.76. Notwithstanding Section 22970.75, the participant’s beneficiary designation shall not be given effect and shall be overridden to the extent that such a designation would impair the rights of any surviving spouse under applicable federal or state law.

22970.77. Unless otherwise provided in the beneficiary designation form, each designated beneficiary shall be entitled to equal shares of the lump sum distribution that may be payable from the participant’s account upon the death of the participant.

22970.78. In the event the participant dies without a valid beneficiary designation on file, any balance remaining in the participant’s account shall be payable to the participant’s survivors in the following order:

- (a) The participant’s spouse.
- (b) The participant’s natural or adopted children.
- (c) The participant’s parents.
- (d) The participant’s estate.

CHAPTER 11. ELIGIBILITY FOR DISTRIBUTION

22970.80. (a) Upon termination for any reason other than death, disability, or retirement, a participant is entitled to a lump sum distribution of the balance of the participant’s account within a reasonable time following the valuation date immediately following the date of the application.

(b) Application for a distribution for termination of employment shall be made on a distribution request form and in the manner prescribed by the board.

(c) All employers with which the participant is employed as a member of the system shall certify on a form prescribed by the board that the participant’s employment has terminated.

22970.81. (a) Upon termination, a participant may apply for a distribution for retirement, provided the retirement date is no earlier than the date on which the participant attains the early retirement age pursuant to the provisions of Part 3 (commencing with Section 20000). The retirement benefit is a distribution of the balance of the participant's account within a reasonable time following the valuation date immediately following the date of the application.

(b) Application for a distribution for retirement shall be made on a distribution request form and in the manner prescribed by the board.

(c) All employers with which the participant is employed as a member of the system, shall certify on a form prescribed by the board that the participant's employment has terminated.

22970.82. (a) Upon termination, a participant may apply for a distribution for disability. A distribution for disability shall become payable only upon a determination by the board that the participant has a disability of permanent or extended and uncertain duration. The disability benefit is a distribution of the balance of the participant's account within a reasonable time following the valuation date immediately following the date of the application.

(b) Application for a distribution for disability shall be made on a distribution request form and in the manner prescribed by the board.

(c) All employers with which the participant is employed as a member of the system shall certify on a form prescribed by the board that the participant's employment has terminated.

22970.83. (a) Upon receipt of proof of a participant's death, the beneficiary or beneficiaries shall be entitled to a death benefit that is a lump sum distribution of the balance remaining in the participant's account.

(b) If the participant died prior to termination of employment or distribution of all of the contributions and earnings credited to the participant's account, the lump sum distribution shall be an amount that is equal to the balance remaining in the participant's account.

(c) Application for the distribution shall be made on an application form and in the manner prescribed by the board.

22970.84. (a) Any participant who is entitled to a distribution may elect to receive the distribution in either of the following forms:

(1) A single lump sum payment.

(2) Substantially level installment payments for a period of years that extends no longer than the life expectancy of the participant.

(b) Any beneficiary who is entitled to a distribution may elect to receive the distribution in either of the following forms:

(1) A single lump sum payment.

(2) Substantially level installment payments for a period of years that extends no longer than the life expectancy of the beneficiary.



CHAPTER 12. DISTRIBUTIONS AND ROLLOVERS

22970.85. Notwithstanding any other provision of this part, a participant or beneficiary shall not be permitted to elect a distribution under this part that does not satisfy the requirements of paragraph (9) of subsection (a) Section 401 of Title 26 of the United States Code, including the incidental death benefit requirements of subparagraph (G) of paragraph (9) of subsection (a) of Section 401 and the regulations thereunder. The required beginning date of distributions that reflect the entire interest of the participant shall be as follows:

(a) In the case of a lump sum distribution to the participant, the lump sum payment shall be made not later than April 1 of the calendar year following the later of the calendar year in which the participant attains the age of 70 $\frac{1}{2}$ years or the calendar year in which the participant terminates employment.

(b) In the case of a distribution to the participant in the form of periodic payments, payment shall begin not later than April 1 of the calendar year following the later of the calendar year in which the participant attains the age of 70 $\frac{1}{2}$ years or the calendar year in which the participant terminates employment.

(c) In the case of a benefit payable on account of the participant's death after distributions to the participant have commenced in the form of periodic payments, the remainder of the participant's account shall be distributed at least as rapidly as if the participant had not died.

(d) In the case of a benefit payable on account of the participant's death before distributions to the participant have commenced, distributions shall be paid no later than December 31 of the calendar year in which the fifth anniversary of the participant's date of death occurs unless the benefit is paid over a period not extending beyond the life expectancy of the beneficiary and distributions commence not later than December 31 of the calendar year immediately following the calendar year in which the participant died, or in the event that the beneficiary is the participant's spouse, distributions must commence on or before the later of either:

(1) December 31 of the calendar year immediately following the calendar year in which the participant dies.

(2) December 31 of the calendar year in which the participant would have attained the age of 70 $\frac{1}{2}$ years.

22970.86. (a) Distributions from the plan shall be made as soon as practicable after the first valuation date immediately following the date of the request for distribution calculated based upon the valuation date immediately preceding the distribution.

(b) Notwithstanding Chapter 3 (commencing with Section 13100) of Part 1 of Division 8 of the Probate Code or any other law to the contrary, the death benefit payable under the plan may be



requested by the beneficiary and paid as soon as practicable following receipt of proof of the participant's death.

22970.87. (a) If a person becomes entitled to a distribution from the plan that constitutes an eligible rollover distribution within the meaning of paragraph (31) of subsection (a) of Section 401 of Title 26 of the United States Code, the person may elect under terms and conditions established by the board to have the eligible rollover distribution or a portion thereof paid directly to a plan that constitutes an eligible retirement plan within the meaning of paragraph (31) of subsection (a) of Section 401, as specified by that person. Upon the exercise of the election by a person with respect to a distribution or a portion thereof, the distribution by the plan of the amount so designated, once distributable under the terms of the plan, shall be made in the form of a direct rollover to the eligible retirement plan so specified.

(b) Notwithstanding any other provision of this part or Part 3 (commencing with Section 20000), a participant may at any time, in writing, authorize the board to apply any or all of the participant's account to payment of any contributions required as a member of the system or payable to the system at the option of the member pursuant to any provision of Part 3 (commencing with Section 20000), except the normal monthly contributions required in Article 1 (commencing with Section 20671) of Chapter 8 of Part 3. Any distribution or transfer made pursuant to this subdivision shall comply with applicable provisions of Title 26 of the United States Code.

22970.88. Except as otherwise provided in this part, all distributions shall be made directly from the fund to the participant or beneficiary. To the extent required by federal and state law, income and other taxes shall be withheld from each distribution, and the payment shall be reported to the appropriate governmental agency or agencies.

22970.89. (a) The plan's obligations to a participant, beneficiary, or nonparticipant spouse who elected a lump sum distribution cease upon distribution of the lump sum benefit.

(1) Deposit in the United States mail of a warrant drawn in favor of the participant, beneficiary, or nonparticipant spouse and addressed to the latest address on file for that person constitutes distribution of the benefit.

(2) Deposit in the United States mail of a notice that the requested electronic funds transfer has been made as directed by the participant, beneficiary, or nonparticipant spouse constitutes distribution of the benefit.

(3) If the participant, beneficiary, or nonparticipant spouse has elected on a form prescribed by the board to transfer all or a specific portion of the account that is eligible for a direct trustee-to-trustee transfer under paragraph (31) of subsection (a) of Section 401 of Title



26 of the United States Code to the trustee of a qualified plan under Section 401 of Title 26 of the United States Code, deposit in the United States mail of a notice that the requested transfer has been made constitutes distribution of the benefit.

(b) The plan's obligations to a participant or beneficiary who elected to receive a benefit in the form of partial distributions cease upon distribution of the final payment.

(1) Deposit in the United States mail of a warrant drawn in favor of the participant or beneficiary and addressed to the latest address on file for that person constitutes distribution of the benefit.

(2) Deposit in the United States mail of a notice that the requested electronic funds transfer has been made as directed by the participant or beneficiary constitutes distribution of the benefit.

(c) Distribution under paragraph (1), (2), or (3) of subdivision (a) or paragraph (1) or (2) of subdivision (b) pursuant to the board's determination in good faith of the existence, identity, or other facts relating to entitlement of persons constitutes a complete discharge and release of the board, system, and plan from liability for payments.

